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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re T.M., a Person Coming Under the  
Juvenile Court Law.

B269326  
(Los Angeles County  
Super. Ct. No. DK11920)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Appellant,

v.

S.M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Commissioner. Affirmed in part; dismissed in part.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Julia Roberson, Deputy County Counsel, for Plaintiff and Appellant.

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S.M. (mother) appeals from the court's order declaring her sons, T.M. and G.M., to be minors described by Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> Mother also challenges the court's determination that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) is inapplicable to G.M. The Los Angeles County Department of Children and Family Services (Department) cross appeals, contending the court erred in dismissing petition allegations under subdivision (a) of section 300.

We affirm the court's jurisdictional findings. We dismiss the Department's cross-appeal as nonjusticiable, and dismiss as moot mother's appeal of the court's determination that ICWA was inapplicable to G.M.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother was the subject of at least one substantiated referral from 1998 when she was a minor, based on physical and verbal abuse inflicted on her by maternal grandmother Olivia M. The Department concluded mother was not in danger of further abuse or neglect because she was residing with her father. Additional referrals alleging abuse by Olivia M. in 2000, when mother was pregnant with T.M., also did not lead to the Department opening a dependency case, even though the Department substantiated the allegations of emotional abuse. Later, the Department investigated but deemed inconclusive or unfounded allegations of sexual abuse of T.M. in 2002 and physical abuse of T.M. in 2009. The 2009 referral stemmed from a reporting party observing a bruise on the back of T.M.'s neck. T.M. denied any abuse, stating he had fallen and hit the back of his neck on the stairs. The reporting party suspected abuse because the bruise did not look like a fall injury.

At the time of the relevant facts in this case, T.M. was 15 years old, and G.M. was

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

nine years old. The boys have different fathers,<sup>2</sup> and neither father is a party to this appeal. The family came to the Department's attention after T.M. was discovered sleeping in the laundry room of a residential apartment building, and T.M. reported that mother would lock the children out of their apartment if they were not home by 6:00 p.m. T.M. reported to an investigating social worker that mother reversed the locks and would lock the children in their bedroom without access to food up to eight hours, and that she hit him with belts, brooms, and her fist. The social worker observed old scars and bruises on his neck, arms, and back. He claimed he was afraid to go home and would rather live in foster care or a group home. He did not want to get his younger brother, G.M., involved. T.M. informed the social worker he was on probation for possessing and smoking marijuana. He denied being in a gang, but acknowledged he was in a YouTube video making gang signs and singing a rap song.

The social worker interviewed mother. She denied locking T.M. out of the house a few days before. She instead claimed T.M. had come home "high" with red eyes, around 2:30 a.m., and she allowed him in to take a shower and get dressed before giving him money for lunch and bus fare, but that he did not go to school. Mother denied locking the children in their bedroom. When the social worker observed that the locks were reversed on the bedroom door, so that someone outside could lock a person inside the bedroom, mother claimed T.M. had reversed the locks. Mother also denied ever hitting the children, saying she disciplines them by making them write standards and stand in the corner. She said T.M. comes home with marks and bruises, but she does not know how he gets them. Mother confirmed T.M. was on probation possessing and selling drugs, and he was not attending his required drug education classes. She said he was a member of the "PJ's" gang in Watts.

The social worker also interviewed G.M., who denied any physical abuse directed towards him or T.M., and denied ever being locked in the bedroom. When asked about

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<sup>2</sup> Mother identified T.M.'s potential fathers as T.M., Jr. or Y.J., and G.M.'s father as G.M., Sr. The Department was not able to interview any of the potential fathers. G.M., Sr. is in state prison.

the bedroom locks, he said the locks were like that when they moved in, or T.M. had reversed them. The social worker observed small marks and bruises on G.M.'s legs, arms, and back, including some healing belt marks on his right thigh. G.M. said he had fallen off his skateboard.

A medical examination report noted that T.M. had some old scars or marks on his arms, neck, and shoulders, which he claimed were from mother scratching or grabbing him, and a small old scar on his left calf, which he claimed was from being hit with a belt or hanger. G.M. had healed belt loop scars on his right thigh. The examiner stated the children needed a forensic physical abuse examination.

The Department filed a petition under section 300 on June 24, 2015. Two counts under section 300, subdivision (a), alleged the children suffered, or were at risk of suffering "serious physical harm inflicted nonaccidentally" by mother, based on mother striking T.M. with belts, brooms, and her fists, and striking G.M. The petition included six counts under section 300, subdivision (b). The first two were identical to the allegations under section 300, subdivision (a), relating to mother's physical abuse of T.M. and G.M. The third count alleged mother locked the children in the bedroom and withheld food from them for up to eight hours. The fourth count alleged mother excluded T.M. from the home, causing him to sleep outside. The fifth count alleged mother abused marijuana, and the sixth count alleged G.M.'s father's criminal history places G.M. at risk of harm. Three counts under section 300, subdivision (j), repeated the counts alleged under subdivision (a), and the fourth count under subdivision (b).

The court ordered the children detained, but gave the Department discretion to release G.M. to mother, provided the Department made unannounced visits.

On August 12, 2015, the Department filed a jurisdiction and disposition report. Mother and T.M. continued to give conflicting information about mother's disciplinary methods. Mother claimed she began having problems with T.M. when they moved from the projects to Downey in 2012. T.M. repeatedly got in trouble at school for aggressive behavior, sexual behavior, and selling drugs. T.M. had run away three or four times, and she had filed police reports twice, with the last time being several days before the matter

came to the Department's attention. Mother noted in the most recent police report that T.M. has a history of running away. Mother was a nurse, working at a hospital from 6:30 a.m. to 3:30 or 10:00 p.m. G.M. stayed with his paternal grandmother while mother was working, and T.M. would wait in the apartment clubhouse. She took away T.M.'s key to the apartment after he locked G.M. out and smoked marijuana with his friends. Mother described T.M. as rebellious and thought he needed help, but denied that she needed any help.

T.M. said mother would tell him to ice his wounds when he got marks and bruises from mother hitting him. He said he was not afraid of mother, but was sad she did not love him. He admitted selling marijuana and prescription drugs at school, smoking marijuana every day, being aggressive and violent, and belonging to a street gang. He attributed his aggression and drug use to stress caused by mother.

G.M. wanted to return to mother's care. He denied mother hit him or T.M. or withheld food from him. He said T.M. reversed the locks on the bedroom door, and T.M. had once locked G.M. in the bedroom, not mother. G.M. claimed T.M. did not like to follow rules, and would run away and go to the projects because he did not like mother's discipline.

On July 14 2015, staff from the group home where T.M. was staying observed mother interacting with T.M. at T.M.'s probation hearing. Mother expressed how much pain she was in due to T.M.'s lying, saying she wanted to kill herself due to not being with her kids and continuously asking T.M. to tell the truth so she could get her son back. When mother asked T.M. whether she ever beat or starved T.M., he responded "no." Mother later denied saying she was going to kill herself but acknowledged being upset because T.M. was laughing like the probation hearing was funny, and stated she told him "you lied. If you told the truth, I wouldn't even be upset."

Department interviews with G.M.'s paternal grandmother and maternal great-aunt were consistent with mother's account that she did not hit her sons, withhold food, or lock them in the bedroom. Maternal great-aunt was present at T.M.'s probation hearing and denied mother saying that day that she wanted to kill herself. T.M. had stayed with

maternal great-aunt for one week, but the arrangement ended because T.M. required a lot of supervision. She thought mother could not handle T.M., and reported mother said, “I’m done with you” to T.M. at the probation hearing.

On August 19, 2015, the dependency court sustained five counts under subdivision (b) of section 300, amending the counts alleging physical abuse to allege inappropriate physical discipline instead. It dismissed similar counts under subdivisions (a) and (j) of section 300. G.M. was permitted to have an extended visit with mother until the October 13, 2016 disposition hearing, at which the court ordered G.M. to be placed in mother’s custody, and T.M. to remain at a foster home. Mother appealed, and while the appeal was pending, the court terminated jurisdiction over G.M.<sup>3</sup>

## **DISCUSSION**

*The court’s jurisdictional findings are supported by substantial evidence*

The Department asks this court to dismiss as moot mother’s appeal of jurisdictional findings concerning G.M. because the court has since terminated dependency jurisdiction over G.M. However, the court’s four jurisdictional findings related to T.M. as well as G.M. Because the court continues to exercise jurisdiction over T.M., and the allegations as to the sons are interrelated, review of the court’s jurisdictional findings is still warranted.

Mother contends that the court’s jurisdictional findings are not supported by substantial evidence, because they rely solely T.M.’s own statements, which lack credibility in light of internal inconsistencies, contradictory statements made by G.M. and mother, and other information included in the Department’s reports. In essence, mother

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<sup>3</sup> On May 20, 2016, we granted the Department’s request for judicial notice of a minute order dated April 12, 2016, in which the court terminated jurisdiction over G.M. (Evid. Code, § 452, subd. (d)(1).)

asks us to reweigh the evidence and to substitute our judgment for that of the lower court. We decline to do so.

“It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.) In determining whether an order is supported by substantial evidence, “we look to see if substantial evidence, contradicted or uncontradicted, supports [it]. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations[.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) While we recognize that courts may draw inferences based on the evidence, speculation and conjecture alone do not constitute substantial evidence of risk of harm to the minors. (*In re Savannah M.* (2005) 131 Cal.App.4th, 1387, 1394–1395.) The pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

The purpose of the dependency statutes “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) “The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

The record contains substantial evidence to support the court’s jurisdictional findings. All parties submitted the matter for the court’s decision based solely on the

Department's reports, which contained statements from T.M. that mother hit him with belts, brooms, and her fists; locked T.M. and G.M. in a bedroom without any food for up to eight hours while she was at work; and locked T.M. out of the home if he got home too late. T.M. also said that mother hit G.M., but not as often. Mother argues that T.M.'s statements alone do not amount to substantial evidence because his version of events changed over time, and both mother and G.M. denied that mother acted in the manner described by T.M. However, T.M.'s statements were corroborated by physical evidence. A social worker and a police officer observed a lock on the bedroom door that could be locked from the outside. Two different medical examiners noted scars and bruises on T.M. and a healed belt-loop scar on G.M.'s upper right thigh. Mother asks this court to discredit T.M.'s statements and give credit to her own version of events, but that is not the role of the appellate court.

*The Department's cross-appeal is nonjusticiable*

The Department in its cross-appeal contends that because the court correctly sustained two counts concerning mother's inappropriate physical discipline under subdivision (b) of section 300, it was error to dismiss similar allegations concerning mother striking T.M. and G.M. under subdivision (a). For reasons similar to those applicable when an appellate court declines to review a specific jurisdictional finding when jurisdiction would remain based on other findings, we find the Department's appeal nonjusticiable.

"[A]n appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. (E.g., *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, [addressing remaining findings only '[f]or [f]ather's benefit']; *In re Joshua G.* [(2005)] 129 Cal.App.4th [189,] 202, [when a jurisdictional allegation involving one parent is found supported, it is 'irrelevant' whether remaining allegations are supported]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330, [declining to address remaining allegations after one

allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72, [same].)” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) Where the factual allegations would support a finding under either subdivision (a) or (b) of section 300, the question of which subdivision is invoked is merely academic, and not a matter for this court’s consideration. “The many aspects of the justiciability doctrine in California were summarized in *Wilson v. L.A. County Civil Service Com.* (1952) 112 Cal.App.2d 450: ““A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. . . . [A]s a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition. . . .” (*Id.* at pp. 452-453.) An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status. “““It is this court’s duty ““to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.””””” [Citations.]” (*In re I.A., supra*, 201 Cal.App.4th at p. 1490.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the [trial] court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E., supra*, 171 Cal.App.4th at p. 451, see also *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 “[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”].) We have discretion to “reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal (see, e.g., *In re Alexis E., supra*, at p. 454); (2) could be

prejudicial to the appellant or could potentially impact the current or future dependency proceedings (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; see also, *In re I.A.* [*supra*] 201 Cal.App.4th [at p.] 1494); or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ (*In re I.A.*, *supra*, at p. 1493 [not reaching the merits of an appeal where an alleged father ‘has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings’]).” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

The Department does not point to any practical or legal consequences stemming from the court’s order dismissing the petition allegations under section 300, subdivision (a). Because the court continues to exercise jurisdiction over the T.M under subdivision (b) of section 300, we consider the cross-appeal to be nonjusticiable, and refrain from exercising our discretionary authority to review the court’s order finding jurisdiction under subdivision (a).

*Mother’s challenge to the court’s ICWA finding is moot*

Mother contends the court erred in finding the ICWA inapplicable to G.M, arguing the Department did not investigate G.M.’s potential Indian ancestry on his father’s side, and the Department’s ICWA notices were defective because they incorrectly identified G.M.’s father.

When T.M. and G.M. were initially detained in June 2015, mother claimed she had possible Indian heritage, and the court ordered the Department to investigate mother’s claims and report on its investigation. There is no evidence the Department interviewed father or any paternal relatives to determine possible Indian heritage. The Department’s August 19, 2015 report detailed the information received from maternal relatives, and provided copies of the notices sent to various tribes. The notice concerning G.M.’s possible Indian heritage incorrectly listed T.M.’s fathers’ names, rather than G.M.’s father’s name.

Because G.M. was returned to mother’s care at the dispositional hearing, and the

court has since terminated dependency jurisdiction over G.M., we dismiss as moot mother's appeal of the ICWA findings. There is no child custody proceeding concerning G.M. to which the ICWA can be applied, and mother has not shown that this court can grant any practical, effective relief if it were to reach her ICWA challenge. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

### **DISPOSITION**

The court's jurisdictional findings are affirmed. The Department's cross-appeal is dismissed as nonjusticiable. Mother's appeal of the court's determination that ICWA was inapplicable to G.M. is dismissed as moot.

KRIEGLER, J.

We concur:

TURNER, P. J.

BAKER, J.